

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 WILLIE T. SMITH,)
9 Petitioner,) 2:06-cv-1246-RCJ-GWF
10 vs.)
11 DWIGHT NEVENS, *et al.*,)
12 Respondents.)
13 /

14 This action proceeds on a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254, by
15 Willie T. Smith, a pro se Nevada prisoner. The matter is before the court on respondents motion to
16 dismiss the petition on procedural default grounds (docket #37). The motion was filed more than one
17 month ago and petitioner has failed to file his response or opposition despite being advised of the
18 consequences of such action by Notice regarding the requirement of *Klingele v. Eikenberry* and *Rand*
19 *v. Rowland*, served on him on July 12, 2010. Neither has he contacted the court to obtain an extension
20 of the time to file.

21 Petitioner raised three grounds for relief in his petition claiming ineffective assistance of appellate
22 counsel and denial of counsel on direct appeal. The Nevada Supreme Court
23 affirmed denial of the claims in state court on the basis that the claims were successive and untimely.
24 Respondents' argue, therefore, that no relief is available from this court because the decision was based
25 on adequate and independent state law bases. Petitioner has not opposed the motion or responded in any
26 fashion.

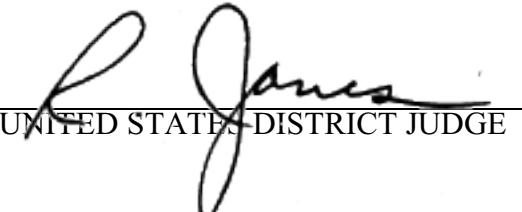
1 Local Rules of Civil Procedure, Rule 7-2 provides that failure of a party to file points and
2 authorities in opposition to a motion will be construed as a consent to the relief requested in the motion.
3 Thus, the court determines that petitioner concedes the validity of the respondents' arguments and will
4 grant the motion to dismiss the petition.

5 **IT IS THEREFORE ORDERED** that respondents' Motion to Dismiss (docket #37) is **granted**.

6 The Petition is **dismissed with prejudice**.

7 The clerk shall enter judgment accordingly.

8 Dated this 24th day of August, 2010.

9
10 
11 R. Jones
12 UNITED STATES DISTRICT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26